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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,867	06/29/2006	Michael Schneider	0262-061920	7715

28289 7590 12/18/2009  
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EXAMINER

PADEH, CAROLYN A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/584,867

**Applicant(s)**

SCHNEIDER ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21 and 23-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21 and 23-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 10, 2009 has been entered.

The rejections of all claims over Sawatzki and Sawatzki in view of Levin and Hsieh have been withdrawn in response to applicants' arguments.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 24-25 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Rombauer.

Akimoto discloses fowl eggs made to contain highly unsaturated fatty acids. The source of the unsaturated fat in the eggs of Akimoto is the feed, which contains oil from microorganisms. The tables in Akimoto show that

the test eggs contain the level of unsaturated fatty acids required in the product. The phospholipids and the non-fat components in the egg would be considered to be egg ingredients. The use of the egg in foods is disclosed in the last three paragraphs before the examples. The claims appear to differ from Akimoto in the recitation that the fat in the egg is solid. Rombauer reminds use that eggs are commonly prepared by hard cooking them. Hard boiling an egg would be expected to form a solid fat within the whole egg. It would have been obvious at the time of applicants' invention to hard cook the egg of Akimoto to form a solid fat whole egg product.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Rombauer as applied to claims 21, 24-25 and 29 above, and further in view of Remacle (2004/002292).

The claims appear to differ from Akimoto in the recitation of the carbohydrate content of the egg. Akimoto manipulates the composition of eggs by adjusting the fat content of the egg and not the carbohydrate content. One of ordinary skill in the art would expect the carbohydrate content of the Akimoto eggs to be like regular eggs. Remacle teaches the carbohydrate content of egg (Table 4 on page 2) to fall within the amount

set forth in the claims. One of ordinary skill in the art, with the carbohydrate content of eggs before him, would expect the carbohydrate content of the eggs of Akimoto to fall within the range of the claims.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Hagiwara (6,358,554)

Akimoto discloses fowl eggs made to contain highly unsaturated fatty acids. The source of the unsaturated fat in the eggs of Akimoto is the feed, which contains oil from microorganisms. The tables in Akimoto show that the test eggs contain the level of unsaturated fatty acids required in the product. The phospholipids and the non-fat components in the egg would be considered to be egg ingredients. The use of the egg in foods is disclosed in the last three paragraphs before the examples. The claims appear to differ from Akimoto in the recitation that the fat in the egg is solid powder. Hagiwara teaches preparing egg powder in the examples by the use of spray drying. It would have been obvious to one of ordinary skill in the art to spray dry the eggs of Akimoto to preserve them.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akimoto (EP 0775449) in view of Rombauer as applied to claims 21,

24-25 and 29 above, and further in view of in view of Theuer (6,579,551) taken with Potter.

Akimoto discloses fowl eggs made to contain highly unsaturated fatty acids. The source of the unsaturated fat in the eggs of Akimoto is the feed, which contains oil from microorganisms. The tables in Akimoto show that the test eggs contain the level of unsaturated fatty acids required in the product. The phospholipids in the egg yolk would be considered to be egg ingredients. The use of the egg in foods is disclosed in the last three paragraphs before the examples. The claims appear to differ from Akimoto in view of Rombauer in the recitation of the fat content of the egg. Theuer teaches the composition of dried egg yolk at column 11, in Table 1 to be at about 50%. Theuer also recognizes fortifying eggs with the polyunsaturated fatty acids of claim 21 at column 2, lines 23-39. Potter is relied upon to show that egg yolk contains non-fat ingredients in Table 48. It would have been obvious to one of ordinary skill in the art to expect the egg yolk of Akimoto to have the fat content of the claims as shown by Theuer and also to possess non-fat ingredients as shown by Potter.

Claims 21, 23-25, 28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melnick (3,594,183) as further evidenced by Potter and Swern.

Melnick discloses an egg food product. The product is made from egg yolk that has been defatted with solvent, mixed with vegetable oil and emulsifiers and spray dried to form a dried refatted egg yolk (see abstract). The removal of egg oil is described at column 4, lines 67-75. The vegetable oils used in the process are disclosed at column 7, lines 1-14. The fat content of the product is shown at column 6, lines 62-68. Potter is relied upon to show that egg yolk contains non-fat ingredients in Table 48. The non-fat ingredients in the yolk would not be expected to be extracted with the fat because of insolubility in solvent. Baileys is relied upon to show that peanut oil contains the amount of long chain polyunsaturated fatty acids that are required in the claims. Polyunsaturated fatty acids are known in the art to be essential nutrients for the diet. It would have been obvious to one of ordinary skill in the art to use peanut oil in the egg process of Melnick in order to provide a nutritive egg product.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art further shows the state of

the are relating to eggs fortified with poly-unsaturated fatty acids, dried eggs and eggs containing vegetable oil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



/Carolyn Paden/

Primary Examiner 1794